

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

MICHAEL WAYNE CAMPBELL and
ALLISON WILDE CAMPBELL,

No. 14-11845 ta7

Debtors.

ANTHONY KEITH HEDLEY,
JENNIFER A. HEDLEY, COCHISE
LOT 1, LLC, and COCHISE LOT 2, LLC,

Plaintiffs,

v.

Adv. No. 14-1107 t

MICHAEL WAYNE CAMPBELL and
ALLISON WILDE CAMPBELL,

Defendants.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT ON § 523(a)(2)(A) COUNT

Before the Court is Defendants' motion for summary judgment on Plaintiffs' claim under 11 U.S.C. § 523(a)(2)(A), doc. 46 (the "Motion"). Plaintiffs and Defendant Michael Campbell's company Building Cents, LLC, formed a joint venture to build high-end houses in Scottsdale, Arizona. The alleged arrangement was that Building Cents would charge Plaintiffs the actual cost of construction plus 5%. Plaintiffs assert Mr. Campbell defrauded them by submitting construction draw requests that materially exceeded actual costs and by failing to disclose and account for the excess funds.

With the Motion, Defendants seek summary judgment by showing, *inter alia*, that the draw requests were proper because they reflected the percentage of the sub-tasks completed, not actual construction costs.

Summary judgment is only appropriate when no genuine disputes of material fact remain. *S.E.C. v. Thompson*, 732 F.3d 1151, 1156-1157 (10th Cir. 2013) (setting forth the summary judgment standard in detail). After reviewing the Motion, Plaintiffs' responses, and the supporting documents, the Court concludes that fact issues remain about a number of key issues, including: (1) whether the draw requests should have been limited to actual construction costs; (2) Mr. Campbell's role in preparing the draw requests; and (3) Plaintiffs' knowledge of the joint venture's business activities and finances.

IT IS THEREFORE ORDERED that the Motion is denied.



Hon. David T. Thuma
United States Bankruptcy Judge

Entered: November 2, 2015

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